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MAR - 1 1996

SECRETARY, BOARD OF
OIL, GAS & MINING

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BEFORE THE DIVISION OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH

IN THE MATTER OF THE FIVE-YEAR
PERMIT RENEWAL,
CO-OP MINING COMPANY
BEAR CANYON MINE
EMERY COUNTY, UTAH

) PETITIONERS MEMORANDUM
) IN OPPOSITION TO CO-OP'S
) MOTION TO STRIKE
)
) Docket No. 95-025
) Cause No. ACT/015/025

Petitioners Huntington-Cleveland Irrigation Company, North Emery Water Users Association and Castle Valley Special Service District (collectively "Petitioners"), by and through their counsel of record, respectfully submit the following Memorandum in Opposition to Co-op Mining Company's ("Co-op") Motion to Strike Petitioner's Objection to Permit Renewal dated February 12, 1996.

simply an **ipse dixit** request for relief that the Division of Oil, Gas & Mining is without authority to grant.

Co-op has obviously confused the informal proceedings before the Division with the formal proceedings before the Board. A purpose of the two-stage administrative proceedings is obviously to allow an opportunity to resolve issues such as concerns over Permit renewals on a more informal basis with the Division before the issues go before the Board, which oversees the Division, in formal proceedings.

POINT II

CO-OP'S MOTION IS BARRED BY THE BOARD'S ORDER

As the Division is well aware, Petitioners' Objection and Request for Informal Conference was recently remanded to the Division by the Board. A copy of this Order is attached as Exhibit A.

The Board has Ordered the Division to hold an informal conference on Petitioners' Objection to Co-op's Permit renewal. (See Page 3, Paragraph 6 of Order.) Thus, Co-op is barred from the relief it seeks and the Division is without authority to deviate from the Order requiring that an informal conference be held.

Co-op participated in the hearing on January 24, 1996 before the Board from which the Order was issued. Co-op is therefore bound by the Board's Order requiring an informal conference and it cannot collaterally attack the Board's Order via this Motion to

Strike, nor can the Division violate the Board's Order. See Utah Code Ann. § 40-10-2 (1993).

POINT III

CO-OP CANNOT AVOID THE ISSUE OF INTERFERENCE WITH BIRCH AND BIG BEAR SPRINGS BY A MOTION TO STRIKE

The basis for Co-op's Motion is that the issue of its interference with Birch and Big Bear Springs has already been determined in the 1994 hearing on Co-op's significant Permit revision to allow it to mine the tank seam. As the Division is well aware, a portion of the Board's Order went beyond the issue of mining of the tank seam then before the Board for the significant Permit revision. This portion of the Board's Order is currently on appeal to the Utah Supreme Court.

In a nutshell, the basis of the appeal is that the Board was without authority to rule on issues not before it. Thus, reliance on that extra-jurisdictional portion of the Order to not fully review the issue of interference with Big Bear or Birch Spring as part of the Permit renewal process would, prior to a ruling by the Utah Supreme Court, be premature. At a minimum, the Division should not allow this Order which is on appeal, to dissuade the Division from reviewing hydrologic issues under its jurisdiction. Instead, the Division should continue to carry out its duties in protecting drinking water from the detrimental effects of mining.

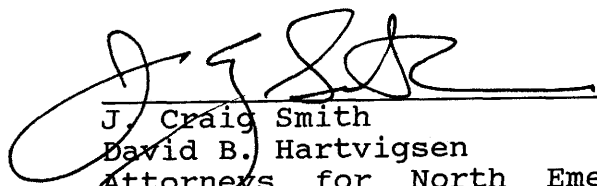
CONCLUSION

The Division cannot grant Co-op's Motion. Motions to Strike are not allowed in informal proceedings before the Division. Additionally, the Board has already ordered that Petitioners' informal conference take place. The Division must follow the Board's Order.

Finally, the prior Order on the substantial Permit revision that Co-op relies upon in making its Motion is not final, and is currently on appeal to the Utah Supreme Court. For each of these reasons, Co-op's Motion must be denied.

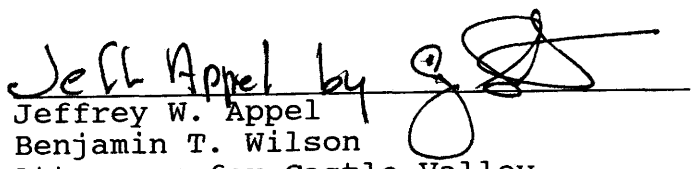
DATED this 29th day of February, 1996.

NIELSEN & SENIOR, P.C.



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Cleveland Irrigation Company

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CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of February, 1996, I have caused to be sent, through the United States mail, first-class, postage prepaid, a true and correct copy of the foregoing PETITIONERS' MEMORANDUM IN OPPOSITION TO CO-OP'S MOTION TO STRIKE addressed as follows:

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IN THE MATTER OF THE FIVE-YEAR
PERMIT RENEWAL, CO-OP MINING
COMPANY, BEAR CANYON MINE,
EMERY COUNTY, UTAH

ORDER GRANTING TEMPORARY RELIEF
AND REMANDING FOR AN INFORMAL CONFERENCE

A document entitled "Joint Objection to Renewal, Appeal and Request for Hearing" dated October 31, 1995, (the "Joint Objection") was filed December 4, 1995, in the above-captioned matter with the Acting Secretary of the Board of Oil, Gas and Mining (the "Board"). The Joint Objection was filed jointly by the Castle Valley Special Service District (the "Service District"), the North Emery Water Users Association (the "Water Association"), and the Huntington-Cleveland Irrigation Company (the "Irrigation Company"). The Service District, the Water Association and the Irrigation Company are collectively referred to herein as the "Objectors".

A Memorandum in Opposition to the Joint Objection was filed December 21, 1995, by C. W. Mining Company dba Co-Op Mining Company (the "Mining Company"). The Division of Oil, Gas and

Mining, Department of Natural Resources, State of Utah (the "Division") did not file a Memorandum in Opposition to the Joint Objection, but the Division did oppose the Joint Objection at the hearing described below.

Pursuant to notice, the Joint Objection came on for hearing at a regularly scheduled meeting of the Board held on January 24, 1996, at 10:00 a.m. in the Board's hearing room at 3 Triad Center, 355 West North Temple, Suite 520, Salt Lake City, Utah. Attorney Jeffrey W. Appel appeared on behalf of the Service District. Attorney J. Craig Smith appeared on behalf of the Water Association and the Irrigation Company. Assistant Utah Attorney General Thomas A. Mitchell appeared on behalf of the Division. Attorney F. Mark Hansen appeared on behalf of the Mining Company. No other persons entered appearances. Assistant Utah Attorney General Patrick J. O'Hara acted as legal counsel to the Board.

Order

After hearing all the arguments of the above counsel, and after reviewing the respective filings by the above parties, the Board hereby finds and rules as follows:

1. The Division issued a Permit to the Mining Company on the Bear Canyon Mine October 30, 1985, which Permit was renewed by the Division for five years on May 20, 1991. The first renewal term on the Permit was to expire on or about November 2, 1995.
2. On or about June 16, 1995, the Mining Company

filed a permit renewal application with the Division asking the Division to grant the Mining Company a second five-year renewal on the Permit for the Bear Canyon Mine.

3. The Objectors, in their jointly filed "Objections to Permit Renewal and Request for Informal Conference" dated and filed October 12, 1995, timely asked the Division to hold an informal conference to allow the Objectors to present their objections to the requested Permit renewal.
4. For various reasons (explained at length at the January 24, 1996, Board hearing but which need not be re-stated here), it is an undisputed fact that the Division did not hold the informal conference requested by the Objectors prior to the Division making a decision on November 2, 1995, which purported to renew the Mining Company's Permit for another five-year term.
5. The Division's purported decision of November 2, 1995, to renew the Permit is hereby reversed because the Board holds that the Division must first hold the informal conference requested by the Objectors before the Division can make a final decision on the requested Permit renewal.
6. The Division shall hold the informal conference requested by the Objectors, and the Division shall

consider all of the objections presented at the informal conference before the Division makes a final decision as to the requested five-year Permit renewal. The informal conference shall be at a date, time and place to be announced by the Director of the Division.

7. The Board does not express any opinion at this time as to the merits, if any, of the Objectors' various contentions, or as to legal issues raised by the Mining Company in its Memorandum in Opposition concerning the alleged res judicata and/or collateral estoppel effect of any prior ruling by the Board concerning the Bear Canyon Mine. Likewise, the Board does not express any opinion at this time as to the discovery issues raised by the Objectors at the January 24, 1996, hearing. All of the foregoing issues shall be considered in the first instance by the Division, if they are raised at the informal conference requested by the Objectors, so they are not yet ripe for Board review and/or action.
8. The Board is mindful that the Objectors carry the burden of proof on their objections to the requested Permit renewal, and that the Mining Company shall not be forced to stop or change permitted mining activities unless and until the